

Issue: Qualification/hostile work environment/discrimination based on injury and gender;  
Ruling Date: March 16, 2005; Ruling #2005-945; Agency: Department of Corrections;  
Outcome: not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2005-945  
March 16, 2005

The grievant has requested qualification of her August 19, 2004 grievance with the Virginia Department of Corrections (DOC or the agency). The grievant asserts that the agency created a hostile work environment by discriminating against her on the basis of her injury and gender. For the reasons set forth below, this grievance does not qualify for hearing.

FACTS

The grievant was employed as a Corrections Officer Senior at a DOC facility. On July 9, 2004, following a period of short-term disability that stemmed from an on-the-job knee injury, the grievant returned to unrestricted full duty work. She was initially assigned to work in the medical control room. On July 14<sup>th</sup> the grievant presented agency management with a document from her physician that placed the following restrictions on her: "no persistent bending or lifting >10#, no walking more than 1 mile/day, no activities which cause swelling/ pain of the right knee."

The grievant claims that on July 19<sup>th</sup> she was informed by a sergeant that she would be moved to the D-2 control room. The grievant told management that she believed that she was unable to work in the D-2 control room because it would require her to climb a set of stairs and would entail some standing. Although management believed that the position was compliant with her doctor's restrictions, it nevertheless agreed to postpone any transfer until August 24, 2004 when she was scheduled to return to her physician.

The last day that the grievant worked was August 8, 2004. She left for health reasons unrelated to her knee injury and has not been able to return to work. She is currently on long term disability.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Therefore, claims relating to assignments and transfers generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination or retaliation

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<sup>1</sup> Va. Code § 2.2-3004(B).

may have improperly influenced management's decision, or whether agency policy may have been misapplied or unfairly applied, resulting in an "adverse employment action."<sup>2</sup>

An adverse employment action is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."<sup>3</sup> Thus, for a grievance to qualify for a hearing, the action taken against the grievant must result in an adverse effect on the terms, conditions, or benefits of one's employment.<sup>4</sup>

In this case, the grievant did not suffer an adverse employment action as a result of management's actions. As noted, while management initially informed the grievant that it was not inclined to revise its plans to transfer her to the D-2 Control room, it later agreed to postpone the move until her next doctor's appointment on August 24<sup>th</sup>. In the interim period, however, the grievant was forced to leave work for health reasons unrelated to her knee injury. The agency's initial reluctance to allow her to continue in her medical control room post, in and of itself, simply did not have a significant detrimental effect on the terms, conditions, or benefits of employment.<sup>5</sup> Because the grievant has failed to show that she suffered an adverse employment action, this grievance does not qualify for a hearing.

#### APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

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Claudia T. Farr  
Director

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William G. Anderson, Jr.  
EDR Consultant, Sr.

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<sup>2</sup> Va. Code § 2.2-3004(A).

<sup>3</sup> Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257, 2268 (1998).

<sup>4</sup> Von Gunten v. Maryland Department of the Environment, 243 F.3d 858, 866 (4<sup>th</sup> Cir 2001)(citing Munday v. Waste Management of North America, Inc., 126 F.3d 239, 243 (4<sup>th</sup> Cir. 1997)). See also EDR Ruling 2004-596, 2004-597.

<sup>5</sup> See Boone v. Goldin, 178 F.3d 253 (4<sup>th</sup> Cir. 1999).

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